

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MARCH 23, 2015

SENATE BILL

No. 159

Introduced by Senator Nielsen

(Principal coauthor: Assembly Member Weber)

(Coauthor: Senator Berryhill)

(Coauthors: Assembly Members Arambula, Brough, Brown, Chu, Eduardo Garcia, Kim, and Mathis)

February 3, 2015

An act to amend Section 10111 of the Public Contract Code, relating to state government, and declaring the urgency thereof, to take effect immediately. *government.*

LEGISLATIVE COUNSEL'S DIGEST

SB 159, as amended, Nielsen. California Disabled Veteran Business Enterprise Program: goal achievement.

Existing law establishes statewide participation goals that apply to the overall dollar amount expended each year by an awarding department, as defined, to facilitate the participation of disabled veteran business enterprises in state contracts, and establishes the California Disabled Veteran Business Enterprise Program for this purpose. Existing law requires the Department of General Services to make available a report on contracting activity containing specified information, including a statistical summary detailing each awarding department's goal achievement under the California Disabled Veteran Business Enterprise Program and a statewide total of those goals.

This bill would specify that an awarding department's goal achievement under the California Disabled Veteran Business Enterprise Program, and statewide total of those goals, be measured as specified. The bill would also make a legislative finding that this bill is clarifying and declaratory of existing law.

This bill would incorporate additional changes to Section 10111 of the Public Contract Code proposed by SB 1219 that would become operative if this bill and SB 1219 are enacted and this bill is enacted last.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10111 of the Public Contract Code is
- 2 amended to read:
- 3 10111. Commencing January 1, 2007, the department shall
- 4 make available a report on contracting activity containing the
- 5 following information:
- 6 (a) A listing of consulting services contracts that the state has
- 7 entered into during the previous fiscal year. The listing shall
- 8 include the following:
- 9 (1) The name and identification number of each contractor.
- 10 (2) The type of bidding entered into, the number of bidders,
- 11 whether the low bidder was accepted, and if the low bidder was
- 12 not accepted, an explanation of why another contractor was
- 13 selected.
- 14 (3) The amount of the contract price.
- 15 (4) Whether the contract was a noncompetitive bid contract,
- 16 and why the contract was a noncompetitive bid contract.
- 17 (5) Justification for entering into each consulting services
- 18 contract.
- 19 (6) The purpose of the contract and the potential beneficiaries.
- 20 (7) The date when the initial contract was signed, and the date
- 21 when the work began and was completed.
- 22 (b) The report shall also include a separate listing of consultant
- 23 contracts completed during that fiscal year, with the same
- 24 information specified in subdivision (a).

1 (c) The information specified in subdivisions (a) and (b) shall
2 also include a list of any contracts underway during that fiscal year
3 on which a change was made regarding the following:

4 (1) The completion date of the contract.

5 (2) The amount of money to be received by the contractor, if it
6 exceeds 3 percent of the original contract price.

7 (3) The purpose of the contract or duties of the contractor. A
8 brief explanation shall be given if the change in purpose is
9 significant.

10 (d) The level of participation, by agency, of disabled veteran
11 business enterprises in statewide contracting and shall include
12 dollar values of contract award for the following categories:

13 (1) Construction.

14 (2) Architectural, engineering, and other professional services.

15 (3) Procurement of materials, supplies, and equipment.

16 (4) Information technology procurements.

17 Additionally, the report shall include a statistical summary
18 detailing each awarding department's goal achievement and a
19 statewide total of those goals. An awarding department's goal
20 achievement is to be measured pursuant to subdivision (a) of
21 Section 999.2 of the Military and Veterans Code and subdivision
22 (c) of Section 10115 of this code.

23 (e) The level of participation by small business in state
24 contracting including:

25 (1) Upon request, an up-to-date list of eligible small business
26 bidders by general procurement and construction contract
27 categories, noting company names and addresses and also noting
28 which small businesses also qualify as microbusinesses.

29 (2) By general procurement and construction contract categories,
30 statistics comparing the small business and microbusiness contract
31 participation dollars to the total state contract participation dollars.

32 (3) By awarding department and general procurement and
33 construction categories, statistics comparing the small business
34 and microbusiness contract participation dollars to the total state
35 contract participation dollars.

36 (4) Any recommendations for changes in statutes or state
37 policies to improve opportunities for small businesses and
38 microbusinesses.

39 (5) A statistical summary of small businesses and
40 microbusinesses certified for state contracting by the number of

1 employees at the business for each of the following categories:
2 0–5, 26–50, 51–75, and 76–100.

3 (6) To the extent feasible, beginning in the year 2008, the
4 number of contracts awarded by the department in the categories
5 specified in paragraph (5).

6 (7) The number of contracts and dollar amounts awarded
7 annually pursuant to Section 14838.5 of the Government Code to
8 small businesses, microbusinesses, and disabled veteran business
9 enterprises.

10 (f) The level of participation of business enterprises, by race,
11 ethnicity, and gender of the owner, in contracts to the extent that
12 the information has been voluntarily reported to the department.
13 In addition, the report shall contain the levels of participation of
14 business enterprises, by race, ethnicity, and gender of the owner,
15 and whether the business is a lesbian, gay, bisexual, or transgender
16 owned business for the following categories of contracts, to the
17 extent that the information has been voluntarily reported to the
18 department:

19 (1) Construction.

20 (2) Purchases of materials, supplies, or equipment.

21 (3) Professional services.

22 (g) In the years 2011 and 2012, any errors reported to the
23 department by an awarding agency as required by Sections 10302,
24 10344, and 12104.5, in the previous fiscal year.

25 (h) The amendments made to this section by Chapter 861 of the
26 Statutes of 2012 shall apply on and after January 1, 2013.

27 *SEC. 1.5. Section 10111 of the Public Contract Code is*
28 *amended to read:*

29 10111. Commencing January 1, 2007, the department shall
30 make available a report on contracting activity containing the
31 following information:

32 (a) A listing of consulting services contracts that the state has
33 entered into during the previous fiscal year. The listing shall
34 include the following:

35 (1) The name and identification number of each contractor.

36 (2) The type of bidding entered into, the number of bidders,
37 whether the low bidder was accepted, and if the low bidder was
38 not accepted, an explanation of why another contractor was
39 selected.

40 (3) The amount of the contract price.

1 (4) Whether the contract was a noncompetitive bid contract,
2 and why the contract was a noncompetitive bid contract.

3 (5) Justification for entering into each consulting services
4 contract.

5 (6) The purpose of the contract and the potential beneficiaries.

6 (7) The date when the initial contract was signed, and the date
7 when the work began and was completed.

8 (b) The report shall also include a separate listing of consultant
9 contracts completed during that fiscal year, with the same
10 information specified in subdivision (a).

11 (c) The information specified in subdivisions (a) and (b) shall
12 also include a list of any contracts underway during that fiscal year
13 on which a change was made regarding the following:

14 (1) The completion date of the contract.

15 (2) The amount of money to be received by the contractor, if it
16 exceeds 3 percent of the original contract price.

17 (3) The purpose of the contract or duties of the contractor. A
18 brief explanation shall be given if the change in purpose is
19 significant.

20 (d) The level of participation, by agency, of disabled veteran
21 business enterprises in statewide contracting and shall include
22 dollar values of contract award for the following categories:

23 (1) Construction.

24 (2) Architectural, engineering, and other professional services.

25 (3) Procurement of materials, supplies, and equipment.

26 (4) Information technology procurements.

27 Additionally, the report shall include a statistical summary
28 detailing each awarding department's goal achievement and a
29 statewide total of those goals. *An awarding department's goal*
30 *achievement is to be measured pursuant to subdivision (a) of*
31 *Section 999.2 of the Military and Veterans Code and subdivision*
32 *(c) of Section 10115 of this code.*

33 (e) The level of participation by small business in state
34 contracting including:

35 (1) Upon request, an up-to-date list of eligible small business
36 bidders by general procurement and construction contract
37 categories, noting company names and addresses and also noting
38 which small businesses also qualify as microbusinesses.

1 (2) By general procurement and construction contract categories,
2 statistics comparing the small business and microbusiness contract
3 participation dollars to the total state contract participation dollars.

4 (3) By awarding department and general procurement and
5 construction categories, statistics comparing the small business
6 and microbusiness contract participation dollars to the total state
7 contract participation dollars.

8 (4) Any recommendations for changes in statutes or state
9 policies to improve opportunities for small businesses and
10 microbusinesses.

11 (5) A statistical summary of small businesses and
12 microbusinesses certified for state contracting by the number of
13 employees at the business for each of the following categories:
14 0–5, 26–50, 51–75, and 76–100.

15 (6) To the extent feasible, beginning in the year 2008, the
16 number of contracts awarded by the department in the categories
17 specified in paragraph (5).

18 (7) The number of contracts and dollar amounts awarded
19 annually pursuant to Section 14838.5 of the Government Code to
20 small businesses, microbusinesses, and disabled veteran business
21 enterprises.

22 (f) The level of participation of business enterprises, by race,
23 ethnicity, and gender of the owner, in contracts to the extent that
24 the information has been voluntarily reported to the department.
25 In addition, the report shall contain the levels of participation of
26 business enterprises, by race, ethnicity, and gender of the owner,
27 and whether the business is a lesbian, gay, bisexual, or transgender
28 owned business for the following categories of contracts, to the
29 extent that the information has been voluntarily reported to the
30 department:

31 (1) Construction.

32 (2) Purchases of materials, supplies, or equipment.

33 (3) Professional services.

34 (g) In the years 2011 and 2012, any errors reported to the
35 department by an awarding agency as required by Sections 10302,
36 10344, and 12104.5, in the previous fiscal year.

37 (h) *The level of participation by employment social enterprises*
38 *in state contracting, including the following:*

1 (1) Upon request, an up-to-date list of eligible employment
2 social enterprises bidders by general procurement and construction
3 contract categories.

4 (2) By general procurement and construction contract
5 categories, statistics comparing the employment social enterprises
6 contract participation dollars to the total state contract
7 participation dollars.

8 (3) By awarding department and general procurement and
9 construction categories, statistics comparing the employment social
10 enterprises contract participation dollars to the total state contract
11 participation dollars.

12 (4) Any recommendations for changes in statutes or state
13 policies to improve opportunities for employment social
14 enterprises.

15 (5) The aggregate number of employees participating in
16 employment social enterprises and verification of on-the-job and
17 life skills training identified in subparagraph (D) of paragraph
18 (3) of subdivision (d) of Section 14837 of the Government Code.
19 This information shall be reported by categories, as established
20 by the department.

21 ~~(h)~~

22 (i) The amendments made to this section by the act adding this
23 subdivision Chapter 861 of the Statutes of 2012 shall apply on and
24 after January 1, 2013.

25 SEC. 2. The Legislature finds and declares that the amendments
26 made by this act to *paragraph (4) of subdivision (d) of Section*
27 10111 of the Public Contract Code are clarifying and declaratory
28 of existing law.

29 ~~SEC. 3. This act is an urgency statute necessary for the~~
30 ~~immediate preservation of the public peace, health, or safety within~~
31 ~~the meaning of Article IV of the Constitution and shall go into~~
32 ~~immediate effect. The facts constituting the necessity are:~~

33 ~~(1) California State Auditor Report 2013-115 on the Disabled~~
34 ~~Veteran Business Enterprise (DVBE) Program found that during~~
35 ~~the 2012-13 fiscal year, 83 percent of the DVBE contract award~~
36 ~~amounts went to only 30 DVBE firms and that a lack of~~
37 ~~standardized reporting by awarding agencies may distort an~~
38 ~~assessment of whether the program is meeting the legislative intent.~~

39 ~~(2) The California State Auditor's Office recommended that in~~
40 ~~order to ensure accuracy and consistency in reporting requirements~~

1 for the DVBE Program, it is necessary for the Legislature to clarify
2 that an awarding department's goal achievement under the DVBE
3 Program is to be measured by the overall dollar amount expended
4 each fiscal year.

5 ~~(3) Since the DVBE Program comprises of a minimum of 3~~
6 ~~percent of all state contracts awarded each fiscal year, which,~~
7 ~~according to the Department of General Services, was over \$299~~
8 ~~million for the 2013-14 fiscal year, the sheer magnitude of the~~
9 ~~program necessitates urgency in establishing accurate and~~
10 ~~consistent reporting across all awarding departments.~~

11 ~~(4) For the above-mentioned reasons, it is necessary that this~~
12 ~~bill take effect immediately.~~

13 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
14 *Section 10111 of the Public Contract Code proposed by both this*
15 *bill and Senate Bill 1219. It shall only become operative if (1) both*
16 *bills are enacted and become effective on or before January 1,*
17 *2017, (2) each bill amends Section 10111 of the Public Contract*
18 *Code, and (3) this bill is enacted after Senate Bill 1219, in which*
19 *case Section 1 of this bill shall not become operative.*